

D.U.P. No. 2005-8
D.R. No. 2005-11

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

MONMOUTH UNIVERSITY,

Respondent,

-and-

Docket Nos. CO-2005-075,
CU-2005-11

PBA LOCAL 141,

Charging Party/Petitioner.

SYNOPSIS

The Director of Representation dismisses a clarification of unit petition filed by the Borough of Runnemede seeking to exclude the Court Administrator from a unit of white collar employees represented by CWA Local 1034. The Borough asserted that the court administrator supervised the deputy court administrator, and was inappropriately included in CWA's unit at the time the unit was formed. The Director found that the Borough had not demonstrated that the court administrator had ever exercised any true authority to hire, discharge, or discipline any employee.

D.U.P. No. 2005-8
D.R. No. 2005-11

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

MONMOUTH UNIVERSITY,

Respondent,

-and-

Docket Nos. CO-2005-075,
CU-2005-11

PBA LOCAL 141,

Charging Party/Petitioner.

Appearances:

For the Respondent,
McElroy, Deutsch, Mulvaney & Carpenter, LLP
(John Peirano, of counsel)

For the Charging Party/Petitioner,
Loccke and Correia, P.A.
(Michael Bukosky, of counsel)

DECISION

On September 22, 2004, West Long Branch PBA Local 141 (PBA), the majority representative of all supervisory police officers employed by Monmouth University (University) filed an unfair practice charge, Docket No. CO-2005-075 and a clarification of unit petition, Docket No. CU-2005-11 with the Public Employment Relations Commission. In the unfair practice charge the PBA alleges that the University unilaterally removed the position of police captain from its bargaining unit in violation of the New Jersey Employer-Employee Relations Act N.J.S.A. 34:13A-5.4a(1),

(2), (3), (5) and (7) (Act).^{1/} In the clarification of unit petition, the PBA requests that the position of police captain be restored to its existing unit.

The University responds that it is a private employer not subject to the Act, and therefore, the Commission lacks jurisdiction to consider either the charge or the petition. The University requests that both actions be dismissed.

I have consolidated the charge and petition for disposition. The Commission has authority to issue complaints in unfair practice charges where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act, and where jurisdictional requirements have been met. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1; N.J.S.A. 34:13A-3(c). The Commission has delegated that authority to me. Where the complaint issuance requirements have

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

not been met, I may decline to issue a complaint. N.J.A.C.

19:14-2.3. We have conducted an administrative investigation into the allegations of the charge and clarification of unit petition pursuant to N.J.A.C. 19:14-1.6 and N.J.A.C. 19:11-2.2 and 2.6. The parties submitted statements of position on October 12, October 27, December 3 and December 13, 2004.^{2/} The disposition of the charge and petition are properly based upon our administrative investigation since there are no substantial, material facts in dispute which would warrant convening an evidentiary hearing. Based upon my authority and the administrative investigation, I find the following facts.

West Long Branch PBA Local 141 represents all supervisory police officers employed by Monmouth University in its police department. Prior to August 13, 2004, the University recognized the positions of corporal, sergeant, lieutenant and captain within the bargaining unit. On or about August 13, 2004, the University unilaterally removed the position of captain from the bargaining unit.

N.J.S.A. 18A:6-4.2 enables universities to employ their own police force. It provides:

The governing body of any institution of higher education, academy, school or other institution of

^{2/} The University submitted an unsolicited supplemental position statement on February 18, 2005. That position statement was not relied upon in considering this matter.

learning may appoint such persons as the governing body may designate to act as policemen for the institution.

To ensure the qualifications of policemen hired by such institutions the Legislature required that the fitness of applicants must be determined by the chief of police of the municipality in which the institution is located, or the Superintendent of State Police if the institution is located in more than one municipality (N.J.S.A. 18A:6-4.3); and applicants must also successfully complete a police training course (N.J.S.A. 18A:6-4.4). Police officers appointed under these subsections:

. . . shall possess all the powers of policemen and constables in criminal cases and offenses against the law anywhere in the State of New Jersey, pursuant to any limitations as may be imposed by the governing body of the institution which appointed and commissioned the person. N.J.S.A. 18A:6-4.5.

The officers employed by the University are uniformed and armed. Their paychecks are issued by the University not the local municipality or the state. The Chief of the University's police department handles day-to-day matters concerning the supervisory officers. The Chief also consults with the University's Vice President for Administrative Services, who is the University official with operational responsibility for the department, and who exercises ultimate control over labor relations matters concerning the officers. The officers are not enrolled in the New Jersey State Police and Fire Retirement

Pension System. Rather, they are enrolled in the University's private pension system and receive the same benefits package offered to all University employees.

The PBA does not dispute the University's factual assertions concerning the officers; the PBA argues, however, that the employees in question are public employees.

The PBA asserts that the University, and the police officers it employs, provide a public service pursuant to the New Jersey Higher Education Act, N.J.S.A. 18A:3b-1 et seq. The PBA argues:

Monmouth University is a creature of statute... (which) is fully regulated and licensed by this statutory scheme and is also fully licensed and regulated by the New Jersey Commission on Higher Education, pursuant to N.J.S.A. 18A:3b-13.

Therefore, the PBA claims, the University qualifies as a "public employer" under the New Jersey Public Employer-Employee Relations Act. The PBA contends that when the University's Board of Trustees appoint police officers pursuant to Title 18A, it acts as an "authority, commission or board, or any branch of agency of the public service" within the meaning of the Act. N.J.S.A. 34:13A-3(c). As such, the PBA concludes, the University's police officers are public employees exempt from coverage by the NLRA, citing Jackson v. Temple University of the Commonwealth System of Higher Education, 721 F.2d 931, 933 (3rd Cir. 1983).

The PBA also argues that the police officers employed by the University have the full authority and powers of regular full-time police officers within the State of New Jersey, in that they:

. . . carry firearms, make arrests, issue summonses, patrol both inside and outside the University's premises, sometimes perform jointly with other municipal police departments in mutual service type activities and generally perform police functions and police services within the University setting.

Further, the PBA posits, the officers are subject to the direction and control of the Attorney General as the chief law enforcement officer of the State, and their conduct as police officers are subject to the Attorney General's guidelines; thus, their duties and responsibilities are substantially controlled by the State, not the University. The PBA asserts that the University's police officers are in fact, State actors:

". . . public employees performing acts on behalf of the State of New Jersey who are simply performing for Monmouth University as a matter of convenience."

The University does not dispute the PBA's assertion of the legal authority pursuant to which the officers were hired and appointed, but disputes that the officers are public employees within the meaning of the Act. The University iterates that it is a private educational institution, employing only private

employees. The University asserts that the National Labor Relations Board has asserted jurisdiction over disputes involving the representational rights of employees at private colleges and universities, including members of university police departments, since its decision in Cornell University, 74 LRRM 1269, 183 NLRB 329, 334 (1970). See e.g., University of Great Falls, 157 LRRM 1196, 325 NLRB 83 (1997); Elmira College, 143 LRRM 1072, 309 NLRB 842 (1992); Lewis & Clark College, 136 LRRM 1012, 300 NLRB 155; Am. Int'l Coll., 123 LRRM 1284, 282 NLRB 189 (1982); see also Univ. of Chicago; 118 LRRM 1514, 274 NLRB 956, 956-57 (university security officers); Leland Stanford Junior Univ., 79 LRRM 1356, 194 NLRB 1210, 1213-14 (1972) (university police). Moreover, the University argues, supervisors are specifically denied bargaining rights under the NLRA, and the U.S. Supreme Court has held that this jurisdiction is not ceded to the states. See Beasley v. Food Fair of North Carolina, 416 U.S. 653 (1974). Therefore, the University asserts, the Commission's jurisdiction is "totally and completely preempted" by sections 7 and 8 of the National Labor Relations Act (NLRA). San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 242 (1959).

The University notes, that unlike state or municipal police officers, the University's Board of Trustees may, at any time, limit or abolish the jurisdiction of University police officers pursuant to N.J.S.A. 18A:6-4.5. Therefore, the University,

rather than any public entity, entirely controls the jurisdiction of the police officers.

ANALYSIS

The New Jersey Public Employer-Employee Relations Act at N.J.S.A. 34:13A-3(c) provides as follows:

The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This terms shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any authority, commission or board, or any branch or agency of the public service.

The PBA argues that because the University performs a public service - offering higher education to the public - and because police officers employed by the University perform a public service-presumably protecting the public - that the University is a public employer, at least with respect to its police officers.

The PBA's argument is not persuasive. The University's performance of a public service by offering education to the public does not equate its status to that of a "branch or agency of the public service".

The PBA relies heavily upon Title 18A in support of its argument, claiming that because the State regulates higher education through N.J.S.A 18A:3b-1 et seq., and because N.J.S.A

18A:6-4.2 et seq. regulates the hiring of sworn police by institutions of higher education, that private universities such as Monmouth are public employers with respect to police. The PBA further argues that when it appoints police officers, the University acts not as a private, non-profit corporation, but an institution of higher education created pursuant to State statutory authority, and, thus, must be considered a public entity.

I find that argument is unsupported by the wording of the statutes. N.J.S.A 18A:6-4.2 authorizes "any" institution of higher education to "appoint" policemen. Those two words illustrate that the statute is not limited to public employers - "any," means public or private. Moreover, "appoint" demonstrates the Legislature's intent in this context that the University, not the local chief of police or State Police, is to be considered the appointing authority. N.J.S.A 18A:6-4.3. Here, it is the University, presumably the Board of Trustees, that is the governing body that both appointed these employees under N.J.S.A 18A:6-4.2 and commissioned them under N.J.S.A. 18A6-4.3, rather than the State, a municipality or any other public entity.

The statutory scheme created by the Legislature for the employment of police officers even by private employers in this state is for good cause. The Legislature, in furtherance of its obligation to provide for the public safety, wisely created a

scheme to allow private employers to hire and employ their own police officers, and a methodology to ensure that those officers were properly screened and trained. The job of the State Police or local chief under N.J.S.A. 18A:6-4.3 et seq. is not to hire or direct these police officers, but to ensure their qualifications to perform police duties. That involvement by public authorities does not convert the private hiring authority into a public entity.

The PBA's reliance on N.J.S.A. 18A:6-4.5 to support its position similarly lacks merit. That statute simply explains that these policemen have full police powers like any other police in the State, but the "governing body of the institution which appointed and commissioned the person" has the right to limit those powers. Additionally, N.J.S.A. 18A:6-4.6 indicates that the badge worn by these police must have the name of the appointing institution, not the State or a political subdivision thereof.

In sum, I find that the PBA's argument merely establishes that Title 18A provides a statutory scheme for allowing the hiring of police by private employers. That is, the Legislature has empowered these employees as police with the authority to carry guns and make arrests, but allowed them to be hired by private entities who need their own police. The statutory authorization and qualification requirements do not mean that the

otherwise private employer becomes a public employer with respect to its police employees.

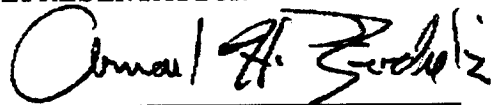
Consequently, I find that under N.J.S.A. 34:13A-3(c), the University is not an authority, commission, board or branch or agency of the public service. The University is a private entity which earns income by offering education to the public. While such offering is itself a service for the public, it does not make the University a branch or agency of the public service.

Since, Monmouth University is not a public employer within the meaning of N.J.S.A. 34:13A-3(c), the Commission is without jurisdiction to consider the merits of the unfair practice charge and clarification of unit petition. Accordingly, both matters must be dismissed.

ORDER

The unfair practice charge and the clarification of unit petition are hereby dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES AND
REPRESENTATION



Arnold H. Zudick, Director

DATED: March 1, 2005
Trenton, New Jersey

An appeal or request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:14-2.3 or N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any appeal or request for review is due by March 14, 2005.